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2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON  
4 AT SEATTLE

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UNITED STATES OF AMERICA, )  
et al., )  
Plaintiffs, )  
vs. ) Case No: C70-9213  
STATE OF WASHINGTON, ) Subproceeding No. 01-1  
(Culverts)  
Defendant. )

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DEPOSITION UPON ORAL EXAMINATION

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OF

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JOHN KLOCHAK

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9:38 a.m.

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July 21, 2006

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900 Fourth Avenue, Room 2000

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Seattle, Washington

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Katherine M. Cullman

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CCR 3001

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1       culverts that you believe have affected anadromous fish  
2       populations in the Skagit watershed?

3       A When you say "affected populations," you would mean that it made  
4       more fish?

5       Q I am quoting from the tribal attorneys' description of what you  
6       would testify about. So -- "selected culverts whose repair or  
7       replacement has affected or could affect anadromous fish  
8       populations."

9                          Do you have an understanding of what that means  
10          regarding the scope of your testimony?

11       A Yes, I believe I do.

12       Q What is that understanding?

13       A Well, I believe that I may be asked to describe specific  
14          examples of culverts that either could be repaired to increase  
15          fish populations or at least increase production from habitat  
16          that has been blocked; or increase fish passage into or out of  
17          habitats that have been blocked. And also culverts that  
18          specifically have been fixed and have allowed for fish passage  
19          and resulting fish production.

20       Q Are you able today to identify those specific culverts that  
21          could affect anadromous fish populations and where repair might  
22          increase the population?

23       A Yes. I'm not sure that I would be able to identify each and  
24          every one, but I certainly can identify some examples.

25       Q Okay. Could you do that, please.

1 A Well, I believe that the suite of cul -- you would be looking at  
2 culverts that could be repaired to provide fish passage,  
3 correct? These are ones that are, to my knowledge, not  
4 currently repaired.

5 Q Okay.

6 A I would think that these suite of culverts at Wiley Slough would  
7 be a good example, although those are, again, listed as unknowns  
8 in the barrier protocol.

9 There's -- let's see, there are a number of  
10 culverts on tributaries to Nookachamps Creek. I would have to  
11 go into my notes to get those exactly.

12 The other is a culvert on Sutter Creek on  
13 Highway 20. That is a barrier.

14 And I think there are many more examples, but I  
15 would probably leave that there. I haven't really exhaustively  
16 gone through the inventory to identify individual culverts at  
17 this time.

18 Q Is that something you expect to do before the trial in this  
19 case?

20 A I believe that I may have occasion to review some of my old  
21 notes.

22 Q Would you expect to actually go out and look at the culverts?

23 A I may. I'm not sure.

24 Q With respect to those culverts on Nookachamps Creek --

25 A They're tributaries, a number of tributaries to Nookachamps

1 Creek, some of which are named; some of which are unnamed.

2 Q Are those all state-owned culverts?

3 A There are some state-owned ones. And there are some non  
4 state-owned ones. I presume that for the purposes of this case  
5 we would be looking at state-owned, but I don't know.

6 Q Do you think of these culverts altogether, though? Is it -- is  
7 it one big suite of culverts on these tributaries to Nookachamps  
8 Creek? Is that how you view the problems? That's how you, I  
9 thought, described it.

10 A It's both a -- how do I view the problem? I guess I view the  
11 problem of fish passage as something that affects watersheds  
12 broadly. There are problems -- there are certain problems that  
13 can be fixed on an individual basis, and other problems that  
14 really need to be treated collectively.

15 Q Does it make sense to you to fix just the state culverts without  
16 fixing the others?

17 A It makes sense to me to fix any of the culverts that are  
18 problems.

19 Q Why is that? If you've got -- well, let's use an example. If  
20 you've got a blocking culvert near the mouth of the stream  
21 that's not state owned, and then you've got some other blocking  
22 culverts upstream that are state owned, why does it make sense  
23 to fix the state-owned culverts when they're not fixing the one  
24 that's not state owned?

25 A Well, it could make sense because -- it could make sense for a

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C E R T I F I C A T E

4 STATE OF WASHINGTON )  
5 ) SS  
6 COUNTY OF KING )

I, Katherine Cullman, a Notary Public in and for the  
7 State of Washington, do hereby certify:

8 That the foregoing deposition was taken before me at  
the time and place therein set forth;

9  
10 That the witness was by me first duly sworn to testify  
11 to the truth, the whole truth, and nothing but the truth; and  
the testimony of the witness and all objections made at the  
time of the examination were recorded by voice recognition by  
12 me, and thereafter transcribed under my direction;

13 That the foregoing transcript is a true record of  
the testimony given by the witness and of all objections made  
at the time of the examination, to the best of my ability.

14 I further certify that I am in no way related to any  
15 party to this matter nor to any of counsel, nor do I have any  
interest in the matter.

16 Witness my hand and seal this 27th day of July, 2006.

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Katherine Cullman, Notary  
Public in and for the State  
of Washington, residing at  
Kent. Commission  
expires April 26, 2008.